

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

THIRD EDUCATION GROUP,

Plaintiff,

v.

Case No. 07-CV-1094

RICHARD PHELPS,

Defendant.

ORDER REFERRING CASE FOR EARLY NEUTRAL EVALUATION

Early Neutral Evaluation ("ENE") is a procedure in which the parties and their counsel, early in the case, meet with a neutral evaluator who is knowledgeable in the subject matter. The purpose is to reduce the cost and duration of litigation by providing an early opportunity for the parties to obtain a neutral evaluation of their case and to engage in meaningful settlement negotiations. At the Rule 16 conference recently conducted with the parties, a referral for ENE was discussed. The parties have now advised the court that they are willing to participate.

Accordingly, the court hereby appoints Attorney Thomas Sylke to serve as the neutral evaluator in this case. The evaluation shall also discuss a related matter pending between the parties, Case No. 07-CV-1095.

The ENE process is as follows: within 45 days of the case being referred to ENE, the neutral evaluator hosts a confidential and informal meeting of parties (companies are to be represented by someone knowledgeable about the case and with full settlement authority) and lead counsel at which each side, through counsel, clients or witnesses, presents evidence and arguments supporting its case (without regard to the rules of evidence and without direct or cross-examination of witnesses). The

neutral evaluator identifies areas of agreement, clarifies and focuses the issues and encourages the parties to enter into procedural and substantive stipulations. The neutral evaluator in private prepares an evaluation that includes an assessment of the case, the reasoning that supports that assessment, and where feasible, an estimate of the likelihood of liability and range of damages. Before the neutral evaluator provides the evaluation to the parties, the parties may engage in settlement discussions facilitated by the neutral evaluator. If settlement does not result, the neutral evaluator presents the parties with the evaluation.

All communications made in connection with the ENE proceeding shall be confidential. No person, including the neutral evaluator, may disclose to the trial judge or to any person who is not a party or a party's agent, any communications made during the ENE process. The neutral evaluator's evaluation is not shared with the trial judge.

The neutral evaluator has no power to impose settlement. The confidential evaluation is non-binding. If no settlement is reached, the case remains subject to further pretrial processing.

The neutral evaluator shall volunteer his preparation time and the first four hours in the ENE session. After four hours in an ENE session, the neutral evaluator may either (1) continue to volunteer his time, or (2) give the parties the option of concluding the session or paying the neutral evaluator for additional time at sixty percent of the neutral evaluator's standard hourly billing rate, to be split equally among the parties unless they agree to a different apportionment. The ENE session will continue only if all parties and the neutral evaluator agree. After eight hours in one or more ENE sessions, if all parties agree that further assistance of the neutral evaluator is desired, the neutral evaluator may charge his standard hourly billing rate or such other rate that is acceptable to the neutral evaluator and all parties.

In order to facilitate ENE, the Scheduling Order entered in this case shall be held in abeyance. The Scheduling Order shall be reinstated automatically at the conclusion of the ENE, but the court will consider adjusting the discovery deadlines, if necessary.

SO ORDERED.

Dated at Milwaukee, Wisconsin this 4th day of March, 2008.

s/AARON E. GOODSTEIN
U.S. Magistrate Judge